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No. 84-736

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1984

Supreme Court, U.S.
FILED

DEC 17 1984

ALEXANDER L. STEVENS
CLERK

STATE OF FLORIDA,

Petitioner,

vs.

MORGAN JAMISON, JR.,

Respondent.

Petition For Writ of Certiorari From the District Court
of Appeal of Florida for the Fourth District

Respondent's Brief in Opposition

Respectfully submitted,

RICHARD L. JORANDBY
Public Defender
15th Judicial Circuit of Florida
224 Datura Street/13th Floor
West Palm Beach, FL 33401
(305) 837-2150

RICHARD B. GREENE
Assistant Public Defender

ROBERT E. ADLER
Assistant Public Defender

(1)

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STATEMENT OF THE CASE

Respondent makes the following addition to Petitioner's Statement of the Case:

The Information filed in this case alleges that the offense occurred on June 10, 1982. Appendix I.

REASON FOR DENYING THE WRIT

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL WAS BASED SOLELY ON STATE GROUNDS.

The decision of the Fourth District Court of Appeal was based solely on state grounds, specifically, §901.151(5), Fla. Stat. (1981) which provides:

(5) Whenever any law enforcement officer authorized to detain temporarily any person under the provisions of subsection (2) of this section has probable cause to believe that any person whom he has temporarily detained, or is about to detain temporarily, is armed with a dangerous weapon and therefore offers a threat to the safety of the officer or any other person, he may search such person so temporarily detained only to the extent necessary to disclose, and for the purpose of disclosing, the presence of such weapon. If such a search discloses such a weapon or any evidence of a criminal offense it may be seized.

(emphasis added).

The Fourth District Court of Appeal held that the actions of the law enforcement officer exceeded the limitations of §901.151(5), Fla. Stat. (1981). The court noted that its decision was primarily based on J.R.H. v. State, 428 So.2d 786 (Fla.2d DCA 1983) which involved an illegal search of a satchel

under circumstances similar to those in the case at bar. In that case, the Second District Court of Appeal likewise grounded its decision on, §901.151(5), Fla. Stat. In neither J.R.H. v. State, supra, nor the instant decision were any federal authorities cited.

Contrary to Petitioner's assertion, Article I, §12 of the Florida Constitution has no application to this case. That Section was amended, effective January 4, 1983, to read as follows:

SECTION 12. Searches and seizures --The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained. This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution. (new language underlined).

The Florida Supreme Court held in State v. Lavazzoli, 434 So.2d 321 (Fla. 1983), that this amendment has no retroactive effect. The date of the alleged offense in the case at bar was June 10, 1982. Appendix I. Accordingly, pursuant to State v.

Lavazzoli, supra, the amendment to Article I, §12 of the Florida Constitution, which is relied upon by Petitioner as a basis for this Court's jurisdiction, does not apply.

Moreover, even assuming arguendo that §901.151(5), Fla. Stat. (1981), sets forth parameters of a frisk that are more stringent than those required by Terry v. Ohio, 392 U.S. 1 (1968), there is certainly nothing prohibiting the Florida legislature from doing so. Although it may have enacted this Section in response to this Court's decision in Terry v. Ohio, supra, the legislature did not articulate any intent that the interpretation of the statute be restricted to the standards set forth in that decision. Even if it did, the State of Florida could not seek review in this Court, as it is now attempting to do, solely to obtain an advisory opinion concerning the construction of §901.151(5), Fla. Stat.

Lastly, although the concurring judges in this case cited federal authority as another basis for the result reached, both judges concurred in the decision of the court. Judge Glickstein specifically stated that he concurred with Judge Walden's "well-reasoned opinion" and merely added further comments.

In conclusion, since the decision of the Fourth District Court of Appeal was based solely on state grounds, the petition for writ of certiorari should be denied.

CONCLUSION

The Petition for Writ of Certiorari should be denied because the decision of the Fourth District Court of Appeal was based solely on state grounds.

Respectfully submitted,

RICHARD L. JORANDBY
Public Defender
15th Judicial Circuit of Florida
224 Datura Street/13th Floor
West Palm Beach, FL 33401
(305) 837-2150

Richard B. Greene
RICHARD B. GREENE
Assistant Public Defender

Robert E. Adler
ROBERT E. ADLER
Assistant Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy hereof has been furnished by courier to JOY B. SHEARER, Assistant Attorney General, Room 204 Elisha Newton Dimick Building, 111 Georgia Avenue, West Palm Beach, FL 33401, this 13th day of December, 1984.

Richard B. Greene
Of Counsel

APPENDIX 1

IN THE CIRCUIT COURT for the Nineteenth Circuit of the State of Florida for
MARTIN County of the SPRING Term thereof,
in the year of our Lord one thousand nine hundred and EIGHTY TWO

THE STATE OF FLORIDA

vs.

MORGAN JANISON, JR.

INFORMATION FOR

POSSESSION OF A CONTROLLED SUBSTANCE:
F.S. 893.13(1)(a)

82-437

IN THE NAME AND BY AUTHORITY OF THE STATE OF FLORIDA:

BE IT REMEMBERED that ROBERT E. STONE, State Attorney for the
Nineteenth Judicial Circuit of the State of Florida, prosecuting for the State of
Florida, in MARTIN County, under oath, information makes, that
MORGAN JANISON, JR.

on the 10TH day of
JUNE, one thousand nine hundred and EIGHTY TWO in the County
of MARTIN and State of Florida did

unlawfully then and there, feloniously have in his actual or
constructive possession or control, a controlled substance,
to wit: METHAQUALONE, commonly known as Quaaludes, in violat
tion of Florida Statute 893.13(1)(a).

; contrary to the form of Statute in such case made and provided, and against the peace
and dignity of the State of Florida.

And C. May
Assistant State Attorney for the Nineteenth Judicial Circuit of
Florida, Prosecuting for said State

WITNESSES FOR THE STATE

No. _____

IN THE CIRCUIT COURT

Nineteenth Judicial Circuit of Florida

County _____

MARTIN

THE STATE OF FLORIDA

vs.

MORGAN JAMISON, JR.

INFORMATION FOR

POSSESSION OF A CONTROLLED SUBSTANCE

Presented by the State Attorney of the
Nineteenth Judicial Circuit of the State
of Florida and

Filed this _____ day of _____ 19 _____

Clerk of the Circuit Court

By _____

D.C.

ROBERT E. STONE

State Attorney, Nineteenth Judicial Circuit
of Florida

STATE OF FLORIDA

County of MARTIN

Personally appeared before me DAVID C. MORGAN State Attorney for the Nineteenth Judicial Circuit of the State of Florida, who being first duly sworn, says that the allegations as set forth in the foregoing information are based upon facts that have been sworn to as true, by the competent witness or witnesses, and which, if true, would constitute the offense therein charged; that the said State Attorney further says that this prosecution was made in good faith.

Assistant

David C. Morgan
State Attorney, Nineteenth Judicial Circuit

Sworn to and subscribed before me this the 30 day of JUNE A.D. 19 82

Patricia J. Shaw

Notary Public, State of Florida at large

My Commission Expires May 17, 1983

Printed in Martin for & County Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the Appendix has been furnished by courier, to JOY B. SHEARER, Assistant Attorney General, Counsel for Appellee, Elisha Newton Dimick Building, Room 204, 111 Georgia Avenue, West Palm Beach, FL 33401, this 13th day of December, 1984.

Richard B. Greene
Of Counsel